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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/092,896

03/08/2002

Michael Greenberg

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08/11/2004

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EXAMINER

ABDELWAHED, ALI F

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 08/11/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/092,896
Filing Date: March 08, 2002
Appellant(s): GREENBERG, MICHAEL

Benjamin E. Urcia
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on May 19, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

However, upon further review of the brief, Examiner has withdrawn the rejection of claims 3-6, 11, 12, and 14-17. Therefore, claims on appeal are claims 1, 2, 7-10, and 13.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-17 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,203,395 B1	MCELHANEY	3-2001
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6,113,455	WHELAN ET AL.	9-2000
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www.toyportfolio.com/Infants "Kick Start Busy Crib Center"

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 7-10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,203,395 B1 to McElhaney in view of U.S. Patent No. 6,113,455 to Whelan et al. and "Kick Start Busy Crib Center".

McElhaney discloses the claimed invention except for the concept of the mobile unit and kicking unit being in wireless communication, and lights mounted in the kicking

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unit housing. However, Whelan et al. teaches a crib mounted mobile comprising a remote control unit (64), and the "Kick Start Busy Crib Center" teaches a crib mounted activity center comprising lights mounted in the kicking unit housing (see description). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the infant activity center of McElhaney, in view of Whelan et al. and "Kick Start Busy Crib Center", such that it would provide the device of McElhaney with the aforementioned limitations for the purpose of providing a more entertaining and conveniently controllable crib toy. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the infant activity center of McElhaney to include a wireless communication between the mobile unit and kicking unit, since the Examiner takes Official Notice of the equivalence of a wire and wireless communication for their use in the toy art and the selection of any of these known equivalents to perform a communication function between two elements would be within the level of ordinary skill in the art.

This rejection is set forth in a prior Office Action, mailed on December 5, 2003.

(11) Response to Argument

Upon further review, the Examiner has determined that claims 3-6, 11, 12, and 14-17 are allowable, and has therefore withdrawn the rejection of these claims. Thus, the following response will be directed solely to Appellant's arguments concerning the rejections made to claims 1, 2, 7-10, and 13 which remain under appeal.

With regards to Appellant's arguments that the McElhaney, Whelan et al., and the "Kick Start Busy Crib Center" publication do not teach or suggest the claimed limitation of the present invention concerning the wireless communication between the mobile unit and the kicking unit. Examiner would like to note that the Whelan et al. patent was relied upon in the rejection to merely illustrate the state of the art, at the time the invention was made, with regards to a wireless remote communication between an infant crib mobile and an activation unit (i.e., remote control 64), and that this concept of a wireless remote communication between an infant crib mobile and an activation unit has been known in the art (with respect to the filing date of the present invention) and is clearly taught by the Whelan et al. patent. Furthermore, the remote control (64) would be capable of being operated by an infant if placed within close proximity of the infant within the crib. The infant would only have to begin playing with the remote control and in the process of playing with the remote control press one of the buttons thereon to thereby actuate the respective function on the mobile associated with the particular button pressed by the infant during play. Thus, the remote control device for a crib mobile that is taught by the Whelan et al. patent is reasonably capable of being operated by an infant.

The McElhaney patent however, teaches an electronic infant activity center comprising a mobile unit and a kicking unit (see fig.1) in a wired communication (see fig. 3). The kicking unit is remote from the mobile unit and thus has a remote wired communication with the mobile unit (see fig. 3). The fact that a wired and wireless

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remote control communication have long since been a well known art recognized equivalence in the toy art at the time the claimed invention was made, and the equivalence of a wired and wireless communication for their use in the toy art and the selection of any of these known equivalents to perform a communication function between two components of a toy system would have been well within the level of ordinary skill in the art. The fact that a wired and wireless remote control communication are well known art recognized equivalents in the toy art is further evidenced by the disclosure of U.S. Patent No. 6,011,489 to Ki Kwan et al., in columns 2 and 3, lines 52-67 and 1-17, respectively; and is also further evidenced by the disclosure of U.S. Patent No. 6,039,628 to Kusmiss et al., in figures 4 and 5, and respective portions of the specification. Regardless of the context and application within the toy art, the fact that the wired and wireless communication are considered to be very well known art recognized equivalents would have prompted an obvious modification of the McElhaney patent to provide a wireless communicating mobile unit and kicking unit in place of its existing wired communicating mobile unit and kicking unit.

In response to Appellant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a

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reconstruction is proper. Thus, as previously stated, the knowledge of the art recognized equivalence of a wired and wireless communication for their use in the toy art and the selection of any of these known equivalents to perform a communication function between two components of a toy system would have been well within the level of one having ordinary skill in the relevant art at the time the claimed invention was made.

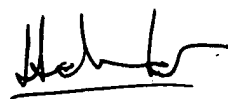
Therefore, the rejection of claims 1, 2, 7-10, and 13 under 35 U.S.C. 103(a) is considered to be proper.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ali Abdelwahed
August 4, 2004

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